

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

v.

**Case No. 4:05--CR-00179(1) GTE
(4:05-cr-00179)**

WALLY K. EL-BECK

ORDER

On July 27, 2009, Petitioner Wally K. El-Beck filed a Notice of Appeal¹ seeking review of this Court's Order denying his request for post-conviction relief pursuant to 28 U.S.C. § 2255, filed July 10, 2009.² Before the appeal may proceed, the Court is required by law to consider whether to grant Petitioner a certificate of appealability. For the reasons discussed below, the Court declines to issue a certificate of appealability.

Simultaneously with the filing of the Notice of Appeal, Petitioner also filed a motion for extension of time³ in which he seeks a five (5) day extension of time for the filing his notice of appeal. The motion is unnecessary because Petitioner's notice of appeal is timely filed. Habeas corpus proceedings are treated as civil actions, and appeals of such proceedings are therefore governed by the filing deadlines contained in Fed. R. App. P. 4(a) rather than the shorter deadlines for criminal appeals, which are governed by Fed. R. App. P. 4(b).

Because Petitioner is attempting to appeal from the final order in a § 2255 proceeding, the law requires that such an appeal may not be taken unless this Court or a Circuit Court justice

¹ Docket No. 138.

² Docket No. 135.

³ Docket No. 137.

issues a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22. In order to issue a certificate of appealability, Petitioner must make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The required substantial showing may be found when a petitioner demonstrates “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S.Ct. 1029, 1039 (2003)(omitting citation and internal quotation marks).

Petitioner’s notice of appeal does not indicate which specific issues resolved in the July 10, 2009, Order he wishes to appeal. The Court assumes that Petitioner is seeking to appeal each and every issue he raised in his petition for § 2255 relief. The Court, after considering all issues resolved against Petitioner in its July 10th Order, is unable to conclude that any issue presented a significant constitutional question. The Court specifically finds that reasonable jurists would not find this Court’s prior denial of collateral relief debatable, wrong, or deserving of encouragement to proceed further.

Because Petitioner has failed to make the required substantial showing of the denial of a constitutional right,

IT IS HEREBY ORDERED THAT Petitioner’s request for a certificate of appealability be, and it is hereby, DENIED.

IT IS FURTHER ORDERED THAT Petitioner’s Motion for Extension of Time to Appeal (Docket No. 138) be, and it is hereby, denied as moot.

IT IS SO ORDERED this 28th day of July, 2009.

/s/Garnett Thomas Eisele
UNITED STATES DISTRICT COURT